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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,300	10/14/2003	Karl Guenther	32022	9836

7590 04/04/2005  
Carl M. Napolitano, Ph.D.  
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Suite 1401  
255 South Orange Avenue  
Orlando, FL 32801

EXAMINER

MCCARRY JR, ROBERT J

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/685,300	GUENTHER ET AL.	
	Examiner	Art Unit	
	Robert J. McCarry, Jr.	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 73-87 is/are allowed.
- 6) ☒ Claim(s) 1-28, 33-41, 46-72 is/are rejected.
- 7) ☒ Claim(s) 29-32 and 42-45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1-17, 19-23, 25-28, 33-41, 46-53, 55-57, 59, 60, 62-66, 68, 69, 71 and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Rypinski (US 3,861,315).

Rypinski discloses a transportation system comprised of a track with a running surface 4 suspended above ground level by columns 2 and constructed of I beams to form an inverted U shaped structure. The beams have an outer flanges and lower flanges. This structure is shown in what the Examiner has interpreted to be figure 7, on sheet 5 of 14 with figure 7A and 7b. The system is further comprised of a carrying vehicle, or truck 62, 63, 64, 65, operates along the running surface 4 and suspends a car body 6, 7 below. The carrying vehicle is powered by conductive busbars 54, 55, 56 mounted above the carrying vehicle which has collector shoes for contacting the busbars. The car body 6, 7 is suspended from suspension members 33 that are pivotally connected to a chassis by swivel hangers 74 above the car body and allowing the body to rotate along a longitudinal axis. As shown in figure 2 the car bodies include both passenger cars and freight cars. The truck is further comprised of wheels 37 for movement along the running surface 4, an electric motor 29, and a chassis 30, which has the suspension members, mounted to it and suspends the car body 6, 7. The Examiner has interpreted the points on the chassis where the suspension members are mounted are grapples hanging from the underside of the chassis. The track has a series

of straight and curved portions. A curved portion is shown in figure 1. The track also has sections that are superelevated. The Examiner has interpreted the term superelevated to mean that the track rises to a higher point than normal. This feature is shown in figures 32 and 33 where the track is shown to have an inclining section and a declining section with a travel section there between. The Examiner has interpreted this center section to be the superelevated section. Figure 33 shows the section to incline by at least eight degrees. Figure 33 also shows at least two chassis 149 150 attached to on truck 151 for articulated movement. Figures 13, 14 and 15 also show the chassis and trucks to be connected for articulated movement along the track. The suspension members are further comprised of a first pair of brackets affixed to the car body, shown at the top of car 35 in figure 7. As second pair of brackets are affixed to the top of a first support 34. The suspension members 33 are affixed to the second pair of brackets and extend upward to the rotating connection points 74 where they are then connected to the overhead truck. Also mounted above the truck is a winch system as described in column 10 lines 50-65. Cables 75 are wound on winding drums 76 of which there are eight drums 76 mounted in pairs on shafts 77. The winch system is used to raise and lower the various vehicles and cargo containers.

Regarding claims 46-53, 55-57 and 59 drawn to a method of operating. Rypinski also discloses a method like that recited in the claims by suspending a running surface of specific construction as described above, operating a carrying vehicle and removably connecting car bodies to the carrying vehicle y a grappling device. Rypinski also

provides a plurality of carrying vehicles connected together. Rypinski also provides superelevated and curved sections of the running surface.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24, 54, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rypinski (US 3,861,315).

Rypinski disclose the transportation system as disclosed above, however, does not disclose that adjacent car bodies are accessible from one another. It is well known in the art that train car bodies, usually on passenger trains, are accessible to each other by doorways. It would have been obvious to one of ordinary skill to apply the teaching of passenger train cars to the system of Rypinski so that passengers can access a plurality of cars during travel.

Claims 18, 61, 67 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rypinski (US 3,861,315) in view of Trenary (US 5,381,737).

Rypinski disclose the transportation system as disclosed above, however, does not disclose the use of steel wheels having a coned shape with flanges. Trenary discloses a transit system that utilizes steel wheels having flanges and wherein the contact surface of the wheel is slightly coned so as to maintain contact and traction with

the running surface around curves. It would have been obvious to one of ordinary skill in the art to have applied wheels, like that of Trenary, to a system like that of Rypinski in order to support heavier weights and larger cargo vehicles.

***Allowable Subject Matter***

Claims 29-32 and 42-45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 73-87 are allowed.

***Response to Arguments***

Applicant's arguments with respect to claims 1-59 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leibowitz (US 4,841,871), Trenary (US 5,381,737) and Cummins (US 6,622,637) all disclose types of transportation systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (703) 305-0581. The examiner can normally be reached on Monday through Friday 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (703) 308-0230. The fax phone

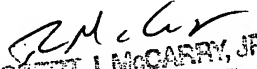
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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJM  
March 22, 2004

  
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